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January 10, 1994

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FCC - MAIL ROOM

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554RE: Ex Parte Presentation in MM Docket 92-266

Dear Mr. Caton:

Pursuant to 47 CFR § 1.1206(1), the undersigned submits this original and one copy of a letter disclosing a written ex parte presentation.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT


John W. Pestle

JWP/kel

cc: Mr. Steven Weingarten (w/encl.)
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January 10, 1994

Mr. Steven Weingarten
Staff Attorney
Federal Communications Commission
Cable Services Division
2033 M Street, N.W.
9th Floor
Washington, D.C. 20554

Dear Mr. Weingarten:

I wanted to pass on the following information on TCI's eliminating its senior citizen discount in many communities. Predominantly TCI appears to be eliminating this discount in small communities, not in large ones. Presumably this is because they believe the small communities will not have the wherewithal to object.

We pass on this information so that in its regulation of basic cable rates and otherwise, the Cable Services Division staff can be alert to and ask about any discounts which TCI has eliminated.

Once rates have become subject to regulation under the Commission's rules, rates may not be changed without the prior approval of this Commission or the franchising authority. In the cases in question in Michigan, TCI is simply unilaterally changing its rates in defiance of the preceding rules. Unless this Commission takes strong action -- such as affirmatively requiring cable companies to notify it of all changes in rates and imposing substantial penalties for failure to do so -- the Commission will simply be unaware of these evasions of the Act and the rules and customers will suffer.

Attached in this regard are the following:

- (1) A letter from TCI to the City of North Muskegon notifying them that the senior citizen discount would be eliminated (comparable letters were sent to communities served by many other TCI systems).

VARNUM, RIDDERING, SCHMIDT & HOWLETT

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Mr. Steven Weingarten
January 10, 1994
Page 2

- (2) Our response to TCI of December 27.
- (3) TCI's response of December 30.
- (4) Our prior letter of December 21 involving the same issue with other TCI communities (and not yet responded to by TCI).

Please note that TCI's December 30 response is incorrect: Because these communities have all been certified to regulate rates TCI may not change basic cable rates without the franchising authority's prior approval. This Commission's rate freeze order is not relevant to this violation.

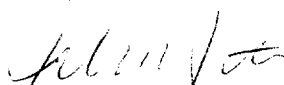
Removing a discount increases rates. Although this Commission's rules allow cable companies to offer discounts below the benchmark (which is implicit in the price cap approach used by this Commission for its benchmark rates) a discounted rate -- like any other below benchmark rate -- is locked in once rate regulation attaches and cannot be unilaterally changed by the cable company. Approval of this Commission or the franchising authority in advance is needed.

The instant TCI discounts appear to apply to basic service and thus will be dealt with initially by the various franchising authorities. However, I wanted you to be aware of this matter because the Cable Services Division will undoubtedly be faced with this issue in instances where it regulates basic cable rates, instances where the discount in question applies to cable programming services, and potentially in appeals of franchising authority decisions.

With best wishes,

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT



John W. Pestle

JWP/kel
Enclosure

cc: Chron file



TCI Cablevision of
Greater Michigan, Inc.

December 1, 1993

Ms. Sabina B. Freeman, Mayor
City of North Muskegon
1502 Ruddiman Drive
N. Muskegon, MI 49445

Dear Mayor Freeman:

As of January 1st, TCI Cablevision will discontinue special cable rate discounts, including the Senior Citizen discount. As this will affect less than 1000 people in our cabled areas, I want you to be aware of the reasons for this action so that you are prepared to answer any questions that may come your way.

Prior to the 1992 Cable Act and the FCC regulations, TCI - like most companies - was able to subsidize discounts through things like charges for special convertors or additional outlets. Today the cable industry is rate regulated, and we have to document charges for all services and equipment. This means TCI can no longer subsidize discounts.

It is important that you understand that the Senior Citizen cable subscriber is already enjoying a lower rate for Basic cable service. 60% of all cable subscribers saw their rates go down, and today's customers can take advantage of a new level of Basic Service for around \$10. That's a savings today of about \$9.00 per month as compared to the rate for Basic service before the new level of service was available. The need for additional discounting has been eliminated.

Our Customer Service Representatives are prepared to speak with any people who may have questions or comments about the discontinuation of the Senior Citizen discount. We want to be sensitive to our customers, especially those who may be on a fixed income. Please feel free to refer any calls that you might receive to us at the following number: 733-0818 or 1-800-487-4817. If you have any additional questions, please call me at 739-7004. Thank you for your time and attention.

Sincerely,

JAMES E. FLOOD
General Manager

700 W. Broadway
P.O. Box 978
Muskegon, MI 49443
(616) 733-0818
Fax (616) 733-0426

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*ALSO ADMITTED IN
PEOPLE'S REPUBLIC OF CHINA

December 27, 1993

Mr. James E. Flood
General Manager
TCI Cablevision of Greater Michigan, Inc.
700 W. Broadway
P.O. Box 978
Muskegon, MI 49443

Dear Mr. Flood:

We are counsel for Cedar Creek Township, City of Ferrysburg, City of Fremont, City of Muskegon, City of North Muskegon, Egelston Township, Fruitland Township, Fruitport Township, Laketon Township, Muskegon Charter Township, and Sheridan Charter Township. We are in receipt of your December 1, 1993 correspondence in which you state TCI will discontinue special cable discounts, including the senior citizen discount, effective January 1, 1994. A sample letter is attached. As you are aware, these municipalities are certified to regulate basic cable services, including special rate categories such as discounts. Therefore, you are not entitled to increase rates for any basic service subscriber in these municipalities, such as by removing a discount, without submitting a proposed rate increase to the municipality in advance and receiving the municipality's approval. See, for example, the FCC's May 3 Report and Order at ¶ 425.

And these communities have also submitted Form 329 Complaints to the FCC for cable programming services. To the extent the discounts apply to these services, you may not discontinue them without prior FCC approval.

The 1992 Cable Act provides that any attempt to avoid the rate regulation provisions of the 1992 Cable Act or FCC rules contrary to the intent the Act or its underlying policies constitutes a prohibited evasion. The FCC stated that by definition, "An evasion is an act attempting to elude scrutiny." Franchising authorities and the FCC can address specific instances of evasive behavior in rate regulation proceedings.

VARNUM, RIDDERING, SCHMIDT & HOWLETT

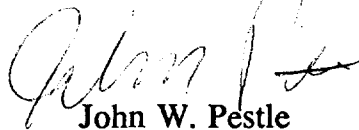
ATTORNEYS AT LAW

Mr. James E. Flood
December 27, 1993
Page 2

The removal of special rate discounts, such as the senior citizen discount, must receive the approval of the franchising authority in the rate regulation process (and, if applicable, the FCC) beforehand. You are therefore instructed not to discontinue or reduce any other discounts. Your failure to comply will result in the municipalities (and, perhaps, the FCC) taking action to correct your rates.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT



John W. Pestle

JWP/kel

cc: Ms. Alexandra Wilson
Steven Weingarten, Esq.

Muskegon Rate Regulation Communities

Cedar Creek Township	MI1260
City of Ferrysburg	MI0505
City of Fremont	MI0510
City of Muskegon	MI0056
City of North Muskegon	MI0057
Egelston Township	MI0506
Fruitland Township	MI1261
Fruitport Township	MI0271
Laketon Township	MI0270
Muskegon Charter Township	MI0025
Sheridan Charter Township	MI0644

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into tomorrow.*



TCI GREAT LAKES, INC.

VIA TELECOPIER

(616) 336-7000

December 30, 1993

John W. Pestle, Esq. ¹⁴⁴⁷
Varnum, Riddering, Schmidt & Howlett
Bridgewater Place
P.O. Box 352
Grand Rapids, MI

Dear Mr. Pestle:

Your December 27 letter to James Flood concerning elimination of TCI's senior citizen and other special discounts has been referred to me for response. Your contention that such discounts may not be eliminated without first obtaining the municipalities' approval is unfounded for at least two reasons.

First, contrary to your assertion, we have not increased basic or expanded basic rates for any subscriber. Instead, we have simply eliminated a special discount afforded to a small number of subscribers. While the Cable Act permits us to provide such a discount, it does not require us to do so. Because our basic rates have already been reduced, we have elected to discontinue providing additional discounts such as the senior citizen discount. Accordingly, effective January 1, 1994, those few subscribers who had qualified for the discount will pay the same amount as all other subscribers receiving the same level of service.

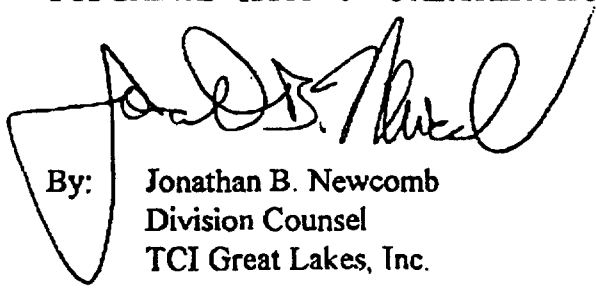
Second, and more importantly, the FCC has repeatedly encouraged cable companies voluntarily to restructure rates in order to comply with the new regulatory scheme so long as the effect of the restructuring is revenue neutral. The decision to discontinue senior citizen and other special discounts is part of our ongoing restructuring in connection with implementation of the 1992 Cable Act and is in full compliance with the "revenue neutral" requirement.

John W. Pestle
December 30, 1993
Page 2

For these reasons, the decision to eliminate senior citizen discounts does not require prior municipal approval, and is not an attempted evasion of the Cable Act or FCC rules. Accordingly, we plan to implement the change effective January 1, 1994 as previously announced.

Very Truly Yours,

MUSKEGON CABLE TV CO., d/b/a
TCI CABLEVISION OF GREATER MICHIGAN, INC.



By: Jonathan B. Newcomb
Division Counsel
TCI Great Lakes, Inc.

cc: Russ Anthony
Jim Flood

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* ALSO ADMITTED IN
PEOPLE'S REPUBLIC OF CHINA

December 21, 1993

Mr. Mark W. Gerhardt
General Manager
TCI Cablevision of Greater Michigan, Inc.
2255 Harbor Petoskey Road
P.O. Box 849
Petoskey, MI 49770

Dear Mr. Gerhardt:

We are counsel for Bagley Township, Bear Creek Township, Boyne Valley Township, Charlevoix Township, City of Boyne City, City of Charlevoix, City of Cheboygan, City of East Jordan, City of Gaylord, City of Harbor Springs, City of Petoskey, City of St. Ignace, Little Traverse Township, Littlefield Township, Pleasant View Township, Resort Township, Springvale Township, Village of Boyne Falls, Village of Mackinaw City, and West Traverse Township. We are in receipt of your December 1, 1993 correspondence in which you state TCI will discontinue special cable discounts, including the senior citizen discount, effective January 1, 1994. A sample letter is attached. As you are aware, these municipalities are certified to regulate basic cable services, including special rate categories such as discounts. Therefore, you are not entitled to increase rates on any basic service subscriber in these municipalities by removing a discount without submitting a proposed rate increase to the municipality in advance and receiving the municipality's approval.

And these communities have also submitted Form 329 Complaints to the FCC for cable programming services. To the extent the discounts apply to these services, you may not discontinue them without prior FCC approval.

The 1992 Cable Act provides that any attempt to avoid the rate regulation provisions of the 1992 Cable Act or FCC rules contrary to the intent the Act or its underlying policies constitutes a prohibited evasion. The FCC stated that by definition, "An evasion is an act attempting to elude

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ATTORNEYS AT LAW

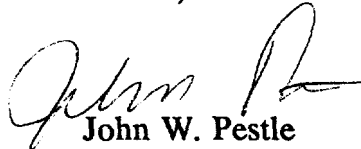
Mr. Mark W. Gerhardt
December 21, 1993
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scrutiny." Franchising authorities can address specific instances of evasive behavior in rate regulation proceedings.

The removal of special rate discounts, such as the senior citizen discount, must receive the approval of the franchising authority in the rate regulation process (and, if applicable, the FCC) beforehand. You are therefore instructed not to discontinue or reduce any other discounts. Your failure to comply will result in the municipalities (and, perhaps, the FCC) taking action to correct your rates.

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT



John W. Pestle

JWP/kel

cc: Ms. Alexandra Wilson
Steven Weingarten, Esq.

We're taking television
into tomorrow.



December 1, 1993

Shirley Jenkins, Supervisor
Bagley Township
98 McCoy Road
Gaylord, MI 49735

Dear Ms. Jenkins:

As of January 1st, TCI Cablevision of Greater Michigan, Inc. will discontinue special cable rate discounts, including the Senior Citizen discount. This will affect less than 8% of all customers in your community. I want you to be aware of the reasons for this action so that you are prepared to answer any questions that may come your way.

Prior to the 1992 Cable Act and the FCC regulations, TCI - like most companies - was able to subsidize discounts through things like charges for special converters or additional outlets. Today the cable industry is rate regulated, and we have to document charges for all services and equipment. This means TCI can no longer subsidize discounts.

It is important that you understand that the Senior Citizen cable subscriber is already enjoying a lower rate for Basic cable service. 100% of all Basic and Expanded Basic subscribers saw their rates go down, and today's customers can take advantage of a new level of Basic Service for around \$10. That's a savings today of roughly 50% per month as compared to the rate for Basic service before the new level of service was available. The need for additional discounting has been eliminated.

Our Customer Service Representatives are prepared to speak with any subscribers who may have questions or comments about the discontinuation of the Senior Citizen discount. We want to be sensitive to our customers, especially those who may be on a fixed income. Please feel free to refer any calls that you may receive to us at the following number: 347-4352.

If you have any additional questions please contact me at 347-5380. Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Gerhardt", with a long horizontal flourish extending to the right.

Mark W. Gerhardt
General Manager

2255 Harbor Petoskey Rd.
P.O. Box 849
Petoskey, Michigan 49770
(616) 347-4352
FAX: (616) 347-5827

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